

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

SUIT NO.1386 OF 1995

Shabbir T. Kapadia
v/s.
Shailesh R. Shah

.. Plaintiff
.. Defendant

Mr.Shabbir Kapadia-plaintiff in person present.
Mr. Mirza for the defendant.

CORAM : A.M. KHANWILKAR, J.
DATED : 18TH JULY, 2007

P.C.

This suit has been notified under caption “undefended suit” in terms of order dated 24th March, 2000. Mr. Mirza, advocate appears for the defendant. He submits that the defendant is untraceable/uncontactable for which reason he has no instructions in the matter. Therefore, oral request is made to discharge him from appearing in the present proceeding. Even if the prayer for discharge is to be accepted that will make no difference, as the matter will have to nevertheless proceed as undefended suit. Defendant has been duly served long back. As the defendant did not bother to file written statement inspite of order dated 24th March, 2000, the suit has been ordered to proceed under caption “undefended suit”.

2. The plaintiff's case is that he had purchased one plot in the project known as 'Green Field Orchid' at Khopoli which was promoted by the defendant. The plaintiff paid a sum of Rs.72,500/- by various cheques to the defendant. As the plaintiff was not allotted the plot nor the amount paid by the plaintiff has been returned inspite of the repeated demand, the plaintiff has approached this court by way of present suit praying for the following reliefs:

- (a) that the Defendant be ordered and decreed to pay the Plaintiff a sum of Rs.74,587/- with interest thereon and further interest at the rate of 21% per annum on Rs.67,500/- or at such rate as this Hon'ble Court may deem fit and proper to grant;
- (b) that costs of this suit be provided for;
- (c) for such other and further reliefs as this Hon'ble Court may deem fit and proper.

3. As mentioned earlier, the defendant has not bothered to file written statement. On the other hand, plaintiff has filed affidavit of evidence by his personal affidavit sworn on 11th April, 2007 restating the case made out in the plaint. Besides, plaintiff has produced original documents which also supports the case of the plaintiff. The fact that the amount as asserted by the plaintiff has been paid to the defendant is established from the documentary evidence beside the statement made on affidavit by the plaintiff. Going by this document, I have no hesitation in taking the view that there is no plausible defence available to the defendant. Presumably, the defendant must have avoided to file written statement for that reason or may be to protract the proceedings. Be that as it may, the case made out by the plaintiff is supported by the material on record for which reason, the plaintiff is entitled for the relief claimed in terms of prayer clause (a). Accordingly, in exercise of power under Order 8 Rule 10 of C.P.C. I proceed to pass the following order.

4. Accordingly, the suit is decreed in terms of prayer clause (a) with costs. Decree be drawn up accordingly.

(A.M. KHANWILKAR, J.)

